International Union of Elevator Constructors, Local 91 *and* Otis Elevator Company, Inc. Case 34–CC–200

September 26, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On April 13, 2005, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent filed exceptions and a supporting brief and the Charging Party filed cross-exceptions. The Respondent filed an answering brief to the Charging Party's cross-exceptions and the Charging Party and General Counsel filed answering briefs to the Respondent's exceptions. The Respondent filed a reply brief to the answering briefs of the General Counsel and Charging Party.[1]

The Board has considered the decision and the record in light of the exceptions,[2] cross-exceptions[3] and briefs and has decided to affirm the judge's rulings, findings,[4] and conclusions and to adopt the recommended Order

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, the International Union of Elevator Constructors, Local 91, East Hartford, Connecticut, its officers, agents, and representatives, shall take the action set forth in the Order.

Dated, Washington, D.C. September 26, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] The Charging Party's answering brief was included in the same document containing its cross-exceptions, and was filed on June 15, 2005. The Respondent requests that the answering brief be "disregarded" as untimely under the Board's Rules because it was due on June 8. Although the Respondent acknowledges that the Charging Party was granted an extension of time to June 15 to file cross-exceptions, it contends that the extension of time did not extend the time beyond June 8 to file an answering brief.

We reject the Respondent's request. As explained by the Board in *P & M Cedar Products*, 282 NLRB 772 (1987) "a request for an extension of time to file cross-exceptions has been construed to enlarge the time to file an answering brief even if the extension-of-time request does not specifically allude to an answering brief." Here, although the Charging Party's answering brief was originally due on June 8, its request for, and grant of, an extension of time to June 15 to file cross-exceptions also enlarged the time until June 15 to file its answering brief.

[2] The Respondent's exception to the judge's findings of 8(b)(4)(i)(ii)(A) violations do not meet the minimum requirements of Sec. 102.46(b) of the Board's Rules. The Respondent merely cites to the judge's decision but fails to assert, either in its exceptions or supporting brief, the particular error it contends the judge committed or on what grounds it believes the judge's findings and recommended remedy should be overturned. Accordingly, under Sec. 102.46(b)(2) the Respondent has waived exceptions to the judge's findings of (b)(4)(i)(ii)(A) violations, and we shall adopt his findings pro forma. See *Gaetano & Assoc*., 344 NLRB No. 65 fn. 6 (2005) and *Oak Tree Mazda*, 334 NLRB 110 (2001).

[3] As correctly pointed out by the Charging Party in its cross-exceptions, the collective-bargaining agreement in this case is not, as the judge indicated, solely between the Charging Party and Respondent Local Union; rather, it is between the Charging Party and the International Union of Elevator Constructors, for and on behalf of its affiliated local unions, including the Respondent.

[4] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility findings unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We agree with the judge that the Respondent, by instructing Otis's bargaining unit employees who were assigned to the CPTV job not to perform their assigned work, induced and encouraged the employees to strike in violation of Sec. 8(b)(4)(i)(B). Accordingly, we find it unnecessary to pass on the judge's finding that the Respondent also violated Sec. 8(b)(4)(i)(B) by inducing and encouraging a "sickout" of unit employees at Otis jobsites elsewhere in Connecticut. Adoption of this additional finding of violation would be cumulative and would not affect the remedy.

Member Liebman agrees that the Respondent made threats that are unlawful under Sec. 8(b)(4)(ii)(B). In so finding, she relies on the judge's finding that the Respondent had informed Robert Nelson, Konover's project superintendent, on the first day of the dispute, that the Respondent was not going to allow the Otis employees it represented to work on the elevators at the jobsite because the elevator demolition work had not been performed by elevator union employees. This direct communication with Konover, considered by Member Liebman to be the neutral/secondary employer, makes this case distinguishable from precedent, which Member Liebman finds questionable, where the alleged 8(b)(4)(ii)(B) threats are made only to the primary employer. See *Teamsters Local 247 (Rymco, Inc.)*, 332 NLRB 1230 fn. 2 (2000).

Daryl Hale, Esq., for the General Counsel.
J. William Gagne Jr., Esq., for the Respondent.
Peter B. Robb, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. I heard this case in Hartford, Connecticut on February 3, 4, and 7, 2005. The charge and amended charge were filed on September 24 and October 12, 2004. The complaint, which was issued on October 29, 2004 alleges:

1. That at all material times, Konover Construction Corporation was hired as the general contractor for the construction of a facility in Hartford for Connecticut Public Television.

2. That in relation to the aforesaid project, Konover entered into a subcontract with Otis Elevator Company to manufacture and install elevators.

3. That Otis Elevator has a contract with the Union covering certain of its elevator employees, which provides at article IV, par. 6:

> The wrecking or dismantling of elevator plants shall be performed by Elevator Constructor Mechanics, Elevator constructor Helpers and Elevator constructor Apprentices. It is understood and agreed that the Union reserves the right to refuse to install any new elevators in any plant where the wrecking or dismantling of the old elevator plant has been done by other than Elevator constructor Mechanics, Elevator Constructor Helpers and Elevator Constructor Apprentices. Before the local union shall refuse to install a new elevator, such action must be first approved by the International. Elevator plants as referred to in this paragraph are understood to include elevators, escalators, moving stairways, dumbwaiters, moving walks, and all other equipment coming under the jurisdiction of the Elevator Constructors.

4. That at some time before March 26, 2004, Konover assigned the work of demolishing and removing the existing elevators to employees other than those of the type represented by the Union. The General Counsel therefore alleges that the Union has had a labor dispute with Konover.

5. That on or about March 26, 2004, the Union, by Steven Bruno, in furtherance of its dispute with Konover, appealed to and ordered individuals employed by Otis to refuse to work at the CPTV jobsite.

6. That on or about March 26, 2004, the Union, by Bruno, in furtherance of its dispute with Konover, notified Otis that pursuant to the above quoted provision of its contract, its members would refuse to install the elevators at the construction project.

7. That on or about March 30, 2004, the Union, by Daniel Kelly, in furtherance of its dispute with Konover, threatened Otis with unspecified reprisals if it failed to provide other work to the individuals who refused to work at the CPTV project.

8. That on or about March 31 and 31, 2004, the Union in furtherance of its dispute with Konover, appealed and ordered individuals employed by Otis at all of its Connecticut jobs, to engage in a work stoppage.

On the entire record in this case including my observation of the demeanor of the witnesses and after reviewing the briefs filed by the parties, I hereby make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

There is no dispute and I find that Otis Elevator is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a person as defined in Section 8(b)(4)(B) of the Act. It also is admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Respondent Union has been the collective-bargaining representative of about 75 to 80 elevator mechanics, apprentices and helpers who are employed by Otis in the State of Connecticut. Its most recent collective-bargaining agreement runs from July 9, 2002 until July 8, 2007. This contract contains the provision described above.

Steven Bruno is the Union's Business manager and Daniel Kelly is a union business agent.

In 2002, Connecticut Public Broadcasting, (CPTV), decided to modernize its facilities in Connecticut and to that end hired, on November 1, 2002, Konover Construction Corp. to be its construction manager. Konover, which does not employ construction workers on its own, was in turn, responsible for the hiring of the various subcontractors to do the work. The building involved was a six-story building that had three elevators; two for passengers and one for freight. Construction began in the summer of 2003.

The original plan was to modify the existing passenger elevators and to replace the existing freight elevator. To that end, Konover issued specifications for bidders and Otis, submitted a bid. This bid, insofar as it related to the replacement elevator, included a bid for the labor involved in demolishing and removing the old freight elevator.

While the elevator bids were pending, CPTV (the owner), decided that it instead of refurbishing the two passenger elevators and buying a new freight elevator, it would be cheaper to replace all three elevators with three new hydraulic elevators. Accordingly, in the autumn of 2003, Konover notified Otis and other elevator companies that the specifications had been changed.

At about the same time, Konover decided to use its existing demolition contractor, Cherry Hill, (who already was on the site for other work), to remove the three old elevators. This was done by Cherry Hill's employees who are not represented by the Elevators' union. There are no Connecticut laws, rules, or regulations that would prevent Cherry Hill or its employees to do this type of work.[1] And the Respondent presented no convincing evidence that this demolition work, if done by a contractor using people other than elevator

[1] The State of Connecticut has an agency called the Connecticut Occupational Licensing Board that issues licenses to employers and trades people to insure that construction work is done safely. This agency does not require any license to remove elevator equipment.

workers, would be unsafe either to Cherry Hill's workers or to the union workers who would be responsible for installing the elevators. (or unsafe to anyone else).

In or about early December 2003, Konover advised both Otis and a rival bidder, (Schindler), that the elevator specifications had changed and requested new bids. In sum, Konover advised that the demolition work had already been done and that the project had changed from a modernization job to a job requiring the installation of new elevators.

Notwithstanding that Schindler was the lower bidder; Konover awarded the work of furnishing and installing three new hydraulic elevators to Otis. Since the work of demolishing and removing the old elevators had already been done by Cherry Hill, that portion of the work was not offered to or bid by Otis. In January 2004, Otis sent employees over to the jobsite to measure the dimensions of the elevator shafts so that the elevators could be built to fit. On March 11, 2004, Otis confirmed its contract with Konover and on March 23, 2003, materials preparatory to installation were delivered to the CPTV jobsite.

On March 23, 2004, Otis assigned three employees to start the job at the site. (Trevor Johnston, Louis Rodriguez, and Eric Sclare). They were scheduled to start work on March 26.

On the morning of Friday, March 26, 2004, the three Otis employees showed up at the jobsite. Nevertheless, at about 8 a.m., the Union's business manager, Steve Bruno, appeared at the site and told Robert Nelson, Konover's Project Superintendent, that he was not going to allow the Otis employees to work because the elevator demolition work had not been done by elevator union employees. According to Otis Superintendent, Russ Larson, he also had a conversation with Bruno wherein he told Bruno that Otis had not been hired to remove the old elevators. Larson testified that Bruno responded that because the demolition work had not been done by union employees, this was a violation of article IV, paragraph 6 of the Union's agreement with Otis. According to Larson, Bruno insisted that Otis reassign the three employees who were at the CPTV jobsite and he acquiesced.

On the afternoon of March 26, 2004, Bruno met with Otis' general manager, Jeff Hastings. At this meeting, Bruno restated his position that he was not going to permit the installation work to go forward because the old elevators had been demolished by employees who were not members of the Elevators' Union. Bruno was not impressed by Hastings' assertion that Otis had not been awarded the demolition work and was unmoved by Hastings' suggestion that the Union file a grievance if it felt that the contract was being violated. Toward the end of the meeting, Bruno explained that since the demolition work had already taken place, he expected Otis to pay a team of employees for 1 week. (that being, I imagine, the amount of man hours that Bruno estimated would have been required to remove the old elevators).

On Monday morning, March 29, Larson told two Otis employees, (mechanic Trevor Johnston and apprentice Sawyers), to go to the CPTV site and start work. When they called in their assignment to the Union, Trevor Johnson told Larson that Bruno would not permit him to work at the jobsite. Later in the morning, Larson, listened to two voice mail messages from Bruno wherein Bruno stated that he still had a problem with the job and would not permit the two Otis employees to work there. In the messages, Bruno demanded that Larson reassign the two employees to other jobs.

Later on March 29, Dan Kelly, the Union's business agent, called Hastings and reiterated the complaint that the demolition work had been done by employees who were not members of the Elevators Union. Hastings repeated his assertions that Otis had not been awarded that work and therefore could not give it to the Otis employees. In an attempt to compromise, Hastings said that Otis would reassign the two employees to another job site if the Union would agree that they could start work at the CPTV site on the next day. Kelly said he would have to talk to Bruno about this. About 30 minutes later, Kelly called back and said that the Union would allow the two employees to start at the CPTV jobsite on March 30 if they were reassigned to another job on March 29.

Early on March 30, 2004, Hastings received a call from Bruno who said that he would not allow the work at the CPTV job to commence. When Hastings said that he thought that he had made an agreement with Kelly, Bruno stated that he had changed his mind. Bruno demanded that the two Otis employees be reassigned to other jobs and Hastings said he would not and expected them to start work at the site. Hastings again suggested that the Union file a contract grievance and said that if the two employees assigned to the job did not do their work they would be subject to discipline.

On the morning of March 30, Johnston, the mechanic assigned to the job, called and told Otis Superintendent Larson that he had spoken to the Union and could not do the work. The two employees thereupon returned to the Otis office and did not work at the site. Thereafter, Union Agent Kelly phoned Larson and despite apologizing for reneging on the previous day's agreement, said that unless Otis found work for the two employees at other jobsites, "there would be consequences."

On March 31, 2004 at about 5:30 a.m., Larson arrived at his office and began listening to the voice mail messages from 18 of the 20 Otis employees under his supervision. They called in sick. The two employees who did not call in sick nevertheless left work at some point during the day. Moreover, all but one of the remaining 75 to 80 Otis employees in the Connecticut bargaining unit also failed to report to work on March 31.

Upon learning of the "sick out," David Powilatis, Otis' labor relations manager, called Ron Koerbel, the Union's regional director. After explaining the problem, Koerbel stated that he would investigate and call back. Later in the afternoon, Koerbel called Powilatis and left a message that the employees were going to go back to work.

On April 1, 2004, most of the employees returned to work except for Johnston and Sawyers who didn't show up for their assigned job at CPTV. Also on that morning, Union Agents Kelly and Bruno went to the jobsite and spoke to Howat, Konover's project manager. During this conversation, Howat explained the history of the project and told Kelly and Bruno that the demolition work had been completed before Otis had received the contract to install the

elevators. About a half hour later, Bruno called Howat and said that he would have the "guys" at the site on April 2. After that, the dispute ended and the work started.

III. ANALYSIS

The complaint alleges that the Union violated Section 8(b)(4)(i)(ii)(B) and 8(b)(4)(i)(ii)(A) of the Act.

To summarize, Section 8(b)(4)(i)(ii)(B) makes it illegal for a labor organization to (i) induce or encourage any individuals employed by any person to engage in a work stoppage or a refusal to perform services or, (ii) to threaten, restrain or coerce any person for (B) an object of forcing or requiring any person to cease doing business with any other person. This section of the Act is commonly called the secondary boycott provision of the Act and typically prohibits a union from striking, picketing, or otherwise coercing entity A, (if it does not have a primary dispute with A), to force or require entity A to cease doing business, (in whole or in part) with entity B. It should be noted that the Act also specifically states: "Provided, that nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing."

Construing the Act's application to situations involving strikes or work stoppages, (as opposed to picketing or leafleting activities), makes it necessary to distinguish actions are primary or secondary activity, a task described by the Supreme Court as not always obvious. *Electrical Workers (IUE) Local 761 (General Electric) v. NLRB*, 366 U.S. 667 at 674 (1961).[2] Thus, the normal work stoppage targeted at employer A by a union representing its own employees, during contract negotiations would, *by definition*, cause some degree of business cessation between that employer and its suppliers and customers. But such a strike clearly would be a primary strike and, as noted by the Court in *General Electric*, is not the type of activity that Congress intended to outlaw. On the other hand, if that same union went to company A's supplier, (company B), and induced those employees to engage in a strike, such an action would cause a cessation of business between company B and its customers and would be deemed to be secondary because the economic pressure brought on company B is being brought to bear on an employer with whom the union does not have the primary dispute. In that circumstance, company B is deemed to be an "unoffending" employer who should be free from pressures and controversies not its own. *NLRB v. Denver Bldg. & Construction Trades Council*, 341 U.S. 675 (1951).

Insofar as relevant to this case, Section 8(b)(4)(i)(ii)(A) makes it illegal for a labor organization to (i) induce or encourage any individuals employed by any person to engage in a work stoppage or a refusal to perform services, or (ii) to threaten, restrain or coerce any person for (A) an object of forcing or requiring a person to enter into an agreement prohibited by Section 8(e) of the Act.

This necessarily leads us to Section 8(e) which states:

> It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void: Provided, That nothing in this subsection (e) [this subsection] shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work…

Taken together, Section 8(b)(4)(i)(ii)(A) and (B) and 8(e) constitute a comprehensive statutory plan to prohibit secondary boycotts but to continue to allow primary strikes, work stoppages, or other primary activities.

In the present case, the uncontradicted evidence shows that Union Agents Bruno and Kelly told Otis management, on and after March 26, that because the demolition work had been done by workers who were not represented by that Union, they would not allow Otis' employees to start work at the CPTV site. And indeed, when on March 30, 2004, Otis refused the Union's demands to reassign the employees, the two employees who were supposed to work at the site, called in and said that the Union had not permitted them to work.

When on March 30, Larson refused Kelly's demand that he reassign the two workers and suggested that they would be subject to disciplinary action if they did not report to work, Kelly stated that there would be consequences. Sure enough, on the following day, virtually all of Otis' elevator workers in the Connecticut region failed to show up for work and left messages that they were out sick. In the absence of evidence showing an unusual and sudden outbreak of infectious disease, and in light of the previous statements by Union Agents Kelly and Bruno, I cannot help but conclude that this "sick out" was, in fact a strike that was induced and encouraged by the Union. *Laborers Local 616 (Bruce & Merrilees)*, 302 NLRB 841 (1991); *National Steel & Shipbuilding Co*., 324 NLRB 499 (1977).

Accordingly, between March 26 and 31, we have substantial evidence that the Union's agents (a) threatened a work stoppage against Otis, (b) induced and encouraged the two Otis workers who were assigned to the CPTV site to refuse to perform services, and (c) induced and encouraged other Otis employees to engage in a state-wide strike. All of these are actions, would be prohibited by Section 8(b)(4)(i) & (ii),

[2] The General Electric case involved a "common situs" situation where there were multiple employers at a single location where the union was engaged in picketing an employer with whom it had an economic dispute. I should note that the reason that I am distinguishing work stoppages and strikes from picketing, leafleting, and other forms of publicity is that a strike or work stoppage necessarily causes some degree of cessation of business between the struck employer and others, whereas picketing and/or leafleting activity may or may not cause the targeted company to lose some business. These days, it is not uncommon for people, including truckdrivers, to simply ignore picket lines

if those actions were taken against a "secondary" person for an object of causing that person to cease doing business with the employer with whom the Union had its real primary dispute, or if those actions were for the purpose of requiring Otis to enter into an unlawful 8(e) hot cargo agreement.

The question therefore is, was Otis a secondary or primary person in the circumstances of this case.

The Union makes two arguments. The first is that the work assigned to the elevator employees would be dangerous because the previous work of removing the old elevators from the building created a dangerous condition. I reject this argument because there was no real showing that this was so. The fact that union agents may say it is unsafe is not quite the same thing as proving it to be unsafe. Moreover, the removal and demolition of elevators does not require any licensure by the Connecticut Occupational Licensing Board which functions to insure that construction work is done safely.

The second argument is that the Union, in conformance with its contract with Otis, was only seeking to preserve bargaining unit work for its members and therefore that its dispute was with Otis as the primary employer.

The General Counsel and the Charging Party respond that the Union's argument should be rejected because in this case, the work of removing the old elevators was never assigned to Otis and therefore Otis never had the right to control it. That is, although Otis' original bid included the demolition work, Konover at some point decided to have that work done by Cherry Hill and did not subcontract that work to Otis when it agreed to buy the three new elevators from Otis. The leading cases dealing with the distinction between lawful work preservation clauses versus unlawful secondary hot cargo clauses are *NLRB v. Enterprise Assn.*, 429 U.S. 507, 525–526 (1977) and *National Woodwork Mfrs. Assn. v. NLRB*, 386 U.S. 612 (1967).[3] In *Enterprise*, the Court stated;

> [T]he existence of a work preservation agreement was not an adequate defense to a charge that the union had engaged in illegal secondary activity; and that a union-instigated refusal of a subcontractor's employees to handle certain materials, which were included in the general contractor's job specifications and delivered to the construction site on the basis of a valid work preservation agreement, constituted unlawful secondary activity, where the union's object was in reality to influence the general contractor by exerting pressure on the subcontractor, an employer who had no power to award the work to the union.

The Union, in support of its position, cites *Painters District Council No. 20 (Uni-Coat Spray Painting Inc.*), 185 NLRB 930 (1970). In that case, a painting subcontractor, having a collective-bargaining agreement with a union arranged with the general contractor so that the general contractor specified a certain type of paint that was manufactured by a third company and that had to be used on the worksite. This was a type of paint that could be sprayed on and its use was desired by the painting subcontractor because it lowered his labor costs. The Union argued that the painting subcontractor was the primary employer because it breached its collective-bargaining agreement by withholding work from its own employees. The painting subcontractor argued that it did not have the right to control as it was the general contractor who had specified the use of the spray-on paint. But the Board found in favor of the Union because the evidence showed that it was the painting subcontractor who had initiated the use of the spray-on paint and therefore it could not be heard to argue that it did not have the right of control and therefore was an "unoffending" neutral.

The facts in the present case are distinguishable from those in *Uni-Coat Spray*, as there is no evidence to suggest that Otis conspired or even participated in any way with Konover in the latter's decision to have the old elevators removed by Cherry Hill. Unlike the *Uni-Coat* case, where the painting contractor had an economic interest in having the particular paint designated for use, so as to reduce its own labor costs, the opposite is the case with Otis. As to Otis, it clearly would have been in its economic interest to have the removal and demolition of the old elevators done by its own employees inasmuch as Otis gets paid more if its employees do more work at the jobsite.

The Union did not contend that its attempt to enforce article IV, paragraph 6 was protected by the construction industry proviso to Section 8(e) of the Act. Nevertheless I note that even though Otis was performing construction work at the site in question, the Board has held that a contract clause allowing for self-help, (by way of a strike or work stoppage), is exempt from the protection of the construction industry proviso to Section 8(e). *Teamsters Local 89*, 254 NLRB 783, 787–788 (1981); *Muskeogon Bricklayers Union #5*, 152 NLRB 360, 366 (1965); *District Council of Carpenters of Portland & Vicinity*, 243 NLRB 416 (1979); *Teamsters Local 179*, 277 NLRB 602 (1985). For example, in *District Council of Carpenters*, id, the Board stated:

> It is settled that although a contract within the construction industry proviso to Section 8(e) is exempt from the operation of that section, it may be enforced only through lawsuits and not by threat, coercion, or restraint proscribed by Section 8(b)(4)(B) . . . . This is so because Congress, in leaving lawful certain onsite 'hot cargo' agreements, did not intend to change the law prohibiting non-judicial enforcement of such contracts.

I therefore conclude that in this case, the Union despite the provision of its collective-bargaining agreement and its as-

[3] In *National Woodwork*, the Supreme Court held that the union did not violate Sec. 8(e) by including in its collective-bargaining agreement a provision stating that none of its members would handle prefitted doors purchased by their employer. The Court held that although the provisions of the clause, if taken literally, would require the company to cease doing business with the door's vendors, the object of the clause was to preserve work traditionally assigned and done by the employer's own employees who were covered by the collective-bargaining agreement. In this respect, the Court stated that although a literal reading of Sec. 8(e) would lead to a conclusion that the clause in question had a cease doing business objective, the Court stated that Congress meant Sec. 8(e) and 8(b)(4)(B) only to prohibit "secondary objectives."

serted work preservation claim, did not have a primary dispute with Otis because the work claimed to be preserved was not work that was within the control of Otis to assign to the employees represented by the Union. It follows that the Union's attempt to enforce that provision, in this context, by threats of work stoppages and actual work stoppages, forced or required Otis, (the secondary) to cease doing business with Konover in retaliation for Konover's decision to use a contractor employing workers not represented by the Respondent, to remove and demolish the old elevators at the CPTV construction site. In a sense, the ultimate object of the Union's actions here was to place economic pressure on Otis so as to place economic pressure on Konover so that Konover would not to do business, in the future, with companies not having contracts with or employing members of the Respondent Union.

CONCLUSIONS OF LAW

Based on the above, I hereby make the following findings and conclusions of law.

1. The Union made threats of work stoppages and engaged in work stoppages for an object of forcing or requiring Otis to cease doing business with Konover. As such I conclude that the Union violated Sections 8(b)(4)(i) & (ii)(B) of the Act.

2. The Union made threats of work stoppages and engaged in work stoppages for an object of forcing and requiring Otis to "re-enter" a hot cargo agreement prohibited by Section 8(e) of the Act. I therefore conclude that the Union violated Section 8(b)(4)(i) & (ii)(A) of the Act.

3. The foregoing violations affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend the issuance of an order directing it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, the International Union of Elevator Constructors, Local 91, AFL–CIO, East Hartford, Connecticut, its officers, agents and representatives, shall

1. Cease and Desist from

(a) Engaging in, or inducing or encouraging any individual employed by Otis Elevator Company to engage in a strike or a refusal in the course of his or her employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or threatening, coercing, or restraining Otis Elevator Company, where in either case an object thereof is to force or require Otis Elevator Company to enter into an agreement which is prohibited by Section 8(e) of the Act.

(b) Engaging in, or inducing or encouraging any individual employed by Otis Elevator Company to engage in a strike or a refusal in the course of his or her employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or threatening, coercing, or restraining Otis Elevator Company, where in either case an object thereof is to force or require Otis Elevator Company to cease doing business with Konover Construction Corporation or any other person or to force or require Konover to cease doing business with any other person.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Connecticut copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Also, if the Union publishes a newsletter for its members, this notice should be published therein. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and mail a copy of the notice to Otis Elevator Company and to Konover Construction Corporation.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 13, 2005

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT engage in, or induce or encourage any individual employed by Otis Elevator Company to engage in a strike or a refusal in the course of his or her employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or threaten, coerce, or restrain Otis Elevator Company, where in either case an object thereof is to force or require Otis Elevator Company to enter into an agreement which is prohibited by Section 8(e) of the Act.

WE WILL NOT engage in, or induce or encourage any individual employed by Otis Elevator Company to engage in a strike or a refusal in the course of his or her employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or threaten, coerce, or restrain Otis Elevator Company, where in either case an object thereof is to force or requiring Otis Elevator Company to cease doing business with Konover Construction Corporation or any other person or to force or require Konover to cease doing business with any other person.

INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS, LOCAL 91, AFL–CIO